

## § 89.608

nonroad engine imported pursuant to § 89.605 or § 89.609;

(10) For nonroad engines not owned by the ICI at the time of importation, documents providing evidence and date of release to the owner (including owner's name, address, and telephone number) for each nonroad engine imported pursuant to § 89.605 or § 89.609;

(11) Documents providing evidence of the date of original manufacture of the nonroad engine. The importer may substitute an alternate date in lieu of the date of original manufacture, provided that the substitution of such alternate date is approved in advance by the Administrator.

(b) The ICI is responsible for ensuring the maintenance of records required by this section, regardless of whether or not facilities used by the ICI to comply with requirements of this subpart are under the control of the ICI.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

## § 89.608 "In Use" inspections and recall requirements.

(a) Nonroad engines which have been imported by an Independent Commercial Importer (ICI) pursuant to § 89.605 or § 89.609 and finally admitted by EPA may be inspected and emission tested by EPA for the recall period specified in § 89.104(b).

(b) ICIs must maintain for eight years, and provide to EPA upon request, a list of owners or ultimate purchasers of all nonroad engines imported by the ICI under this subpart.

(c) The Administrator must notify the ICI whenever the Administrator has determined that a substantial number of a class or category of the ICI's nonroad engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful lives. After such notification, the recall regulations at subpart H of this part govern the ICI's responsibilities. References to a manufacturer in the recall regulations apply to the ICI.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

## 40 CFR Ch. I (7-1-04 Edition)

## § 89.609 Final admission of modification nonroad engines and test nonroad engines.

(a) A nonroad engine may be imported under this section by an Independent Commercial Importer (ICI) possessing a currently valid certificate of conformity only if:

(1) The nonroad engine is six original production years old or older; and

(2) The ICI's name has not been placed on a currently effective EPA list of ICIs ineligible to import such modification/test nonroad engines, as described in paragraph (e) of this section; and

(3) The ICI has a currently valid certificate of conformity for the same nonroad engine class and fuel type as the nonroad engine being imported.

(b) A nonroad engine conditionally imported under this section may be finally admitted into the United States upon approval of the ICI's application by the Administrator. The application is to be made by completing EPA forms, in accordance with EPA instructions. The ICI includes in the application:

(1) The identification information required in § 89.604;

(2) An attestation by the ICI that the nonroad engine has been modified and tested in accordance with the applicable emission tests as specified in Subpart B § 89.119(a) of this part at a laboratory within the United States;

(3) The results of all emission tests;

(4) The applicable deterioration factor assigned by EPA, if any;

(5) The emission test results adjusted by the applicable deterioration factor;

(6) All information required under § 89.610 related to maintenance, warranties, and labeling;

(7) An attestation by the ICI that the ICI is responsible for the nonroad engine's compliance with federal emission requirements, regardless of whether the ICI owns the nonroad engine imported under this section;

(8) The applicable address and telephone number of the ICI, or the name, address, and telephone number of the person who the ICI prefers to receive EPA notification under § 89.609(d);

(9) An attestation by the ICI that all requirements of § 89.607-95 and § 89.610 have been met; and

(10) Such other information as is deemed necessary by the Administrator.

(c) EPA approval for final admission of a nonroad engine under this section is presumed not to have been granted if any requirement of this subpart has not been met.

(d) Except as provided in paragraph (c) of this section, EPA approval for final admission of a nonroad engine under this section is presumed to have been granted if the ICI does not receive oral or written notice from EPA to the contrary within 15 working days of the date that the Engine Programs and Compliance Division of EPA receives the ICI's application under paragraph (b) of this section. Such EPA notice of nonapproval may be made to any employee of the ICI. It is the responsibility of the ICI to ensure that the Engine Programs and Compliance Division of EPA receives the application and to confirm the date of receipt. During this 15 working day hold period, the nonroad engine is stored at a location where the Administrator has reasonable access to the nonroad engine for the Administrator's inspection. The storage is to be within 50 miles of the ICI's testing facility to allow the Administrator reasonable access for inspection and testing. A storage facility not meeting this criterion must be approved in writing by the Administrator prior to the submittal of the ICI's application under paragraph (b) of this section.

(e) *EPA list of ICIs ineligible to import nonroad engines for modification/test.* EPA maintains a current list of ICIs who have been determined to be ineligible to import nonroad engines under this section. The determination of ineligibility is made in accordance with the criteria and procedures in § 89.612(e) of this subpart.

(f) *Inspections.* Prior to final admission, a nonroad engine imported under this section is subject to special inspections as described in § 89.606 with these additional provisions:

(1) If, in the judgment of the Administrator, a significant number of nonroad engines imported by an ICI fail to comply with emission requirements upon inspection or retest or if the ICI fails to comply with a provision

of these regulations that pertain to nonroad engines imported pursuant to § 89.609, the ICI may be placed on the EPA list of ICIs ineligible to import nonroad engines under this section as specified in paragraph (e) of this section and § 89.612(e).

(2) An individual nonroad engine which fails a retest or inspection is to be repaired and retested, as applicable, to demonstrate compliance with emission requirements before final admission is granted by EPA.

(3) Unless otherwise specified by EPA, the ICI bears the costs of all retesting under this subsection, including transportation.

(g) *In-use inspection and testing.* A nonroad engine imported under this section may be tested or inspected by EPA at any time during the recall period specified in § 89.104(b), in accordance with § 89.608(a). If, in the judgment of the Administrator, a significant number of properly maintained and used nonroad engines imported by the ICI pursuant to this section fail to meet emission requirements, the name of the ICI may be placed on the EPA list of ICIs ineligible to import nonroad engines under the modification/test provision as specified in paragraph (e) of this section and § 89.612(e).

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56996, 57021, Oct. 23, 1998]

#### **§ 89.610 Maintenance instructions, warranties, emission labeling.**

The provisions of this section are applicable to all nonroad engines imported under the provisions of § 89.605 or § 89.609.

(a) *Maintenance instructions.* (1) The Independent Commercial Importer (ICI) must furnish to the purchaser, or to the owner of each nonroad engine imported under § 89.605 or § 89.609 of this subpart, written instructions for the maintenance and use of the nonroad engine by the purchaser or owner. Each application for final admission of a nonroad engine is to provide an attestation that such instructions have been or will be (if the ultimate purchaser is unknown) furnished to the purchaser or owner of such nonroad engine at the time of sale or delivery. The ICI must maintain a record of having furnished such instructions.